

OFFICE OF THE ATTORNEY GENERAL

85-00522



CHARLES A. GRADDICK
ATTORNEY GENERAL
STATE OF ALABAMA

SEP 20 1985

JAMES R. SOLOMON, JR.
DEPUTY ATTORNEY GENERAL

H. WARD McMILLAN, JR.
EXECUTIVE ASSISTANT
TO THE ATTORNEY GENERAL

WALTER S. TURNER
CHIEF ASSISTANT ATTORNEY GENERAL

JANIE NOBLES
ADMINISTRATIVE ASSISTANT

ADMINISTRATIVE BUILDING
64 NORTH UNION STREET
MONTGOMERY, ALABAMA 36130

AREA (205) 261-3350
S. FRANK LOEB
RON BOWDEN
JOHN J. BRECKENRIDGE
CHARLES E. CRUMBLY
MARK D. GRIFFIN
ADOLPH J. DEAN, JR.
J. WADE HOPE
ASSISTANT ATTORNEYS GENERAL
REVENUE DEPARTMENT

Honorable Frank H. Riddick
Probate Judge, Madison County
Madison County Courthouse
Huntsville, AL 35801

Filing Tax -- Mortgages --
Judges of Probate

Revolving loan, open end
mortgage secured by resi-
dential property may be
recorded upon payment of tax
on maximum principal in-
debtedness (upper limit of
revolving credit loan).

Dear Judge Riddick:

Reference is made to your letter addressed to the Honorable Charles A. Graddick, Attorney General of Alabama, in which you requested an opinion from this office whether a revolving credit mortgage collateralized by residential property may be recorded in your office upon payment of the \$.15 per each \$100.00 of maximum principal indebtedness even though, under the terms of the mortgage, an unlimited amount of money may be lent over a period of time so long as the total amount does not exceed the "upper limit".

Section 40-22-2(1)b, Code of Alabama 1975 (1984 Cum. Supp.) reads in pertinent part as follows:

Upon all such instruments which are executed to secure or to evidence the securing of an open end or revolving indebtedness with any interest in residential property . . . there shall be paid the sum of \$.15 for each \$100.00 of maximum principal indebtedness, or

fraction thereof, to be secured by such instrument at any one time as stated in the instrument or any amendment thereto. In any event, the privilege or license tax to be paid upon such instruments securing or evidencing the securing of open end or revolving indebtedness with any interest in residential property shall not exceed the amount of \$.15 for each \$100.00 of maximum principal indebtedness, or fraction thereof, to be secured by such instrument at any one time as stated in the instrument or any amendment thereto, irrespective of the cumulative amount advanced from time to time thereunder. (Emphasis added).

It is obvious from the wording of the statute quoted above and especially the underlined portion thereof, that the Legislature intended that in the case of revolving loan mortgages involving residential property such mortgages may be recorded upon payment to the judge of probate of tax on the upper limit of the loan regardless of how much money is later yo-yoed up and down between zero and the upper limit.

Yours very truly,

CHARLES A. GRADDICK

Attorney General

By-



B. FRANK LOEB

Assistant Attorney General

CAG:BFL:jt